

REMARKS

In the Official Action mailed 25 October 2004, the Examiner reviewed claims 1-33. The Examiner has objected to claim 15 because of informalities; has rejected claims 1-3, 5, 9, 11-14, 22-27 and 33 under 35 U.S.C. §102(b); has rejected claims 28-32 under 35 U.S.C. 103(a); and has allowed claims 6-8, 10 and 17-21. The Examiner objected to claim 4 as dependent on a rejected base claim, and indicated that claims 15 and 16 would be allowable, if the objection to claim 15 were overcome.

Applicant has amended claim 1, 15, 22, 26 and 33. Claims 1-33 remain pending.

The Examiner's objection and rejections are respectfully traversed below.

Objection to Claim 15 for Informalities

Claim 15 is objected to because of a typographical error. Applicant has amended the claim as suggested by the Examiner.

Accordingly, reconsideration of the objection to claim 15 as amended is respectfully requested.

Rejection of Claims 1-3, 5, 9, 11-14, 22-27 and 33 under 35 U.S.C. §102(b)

Claims 1-3, 5, 9, 11-14, 22-27 and 33 are rejected under 35 U.S.C. §102(b) as being anticipated by Kosa U.S. Patent No. 4,695,697. Applicant has amended the independent claims 1, 22, 26 and 33, without loss of scope, to recite that the portion of emitted radiation delivered toward the target tissue has sufficient fluence for therapeutic effect.

The Examiner acknowledges that Kosa does not apply radiation emitted by a fluorescent element for therapeutic effect, but rather only to indicate a characteristic, such as temperature, of a catheter tip used to deliver laser radiation for therapeutic effect. As stated in the paper filed 5 May 2004, Kosa, applies the laser radiation for treatment, not the diffuse fluorescent radiation as required by the claims herein. Kosa's fluorescent radiation is solely and explicitly used for sensing conditions, primarily the temperature, at the tip of a catheter. See Kosa, Abstract; Col. 2: lines 14, 68; Col. 5, lines 48-56; Col. 9: line 64-Col. 10, line 3; Col. 12, lines 46-65.

In Kosa, no possible interaction of diffuse radiation with target tissue is mentioned. In fact it is not clear from Kosa whether its fluorescent radiation is in fact directed to the target tissue. The Examiner takes the position that direction of the fluorescent radiation to the target tissue is inherent in Kosa, because of the structure of the catheter tip. However, Applicant finds

no discussion of the fluorescent radiation interaction with target tissue in Kosa. Furthermore, it is not stated in Kosa where the target tissue lies with respect to the output laser radiation, nor with respect to any fluorescent radiation that might escape the tip of the catheter. Therefore the Examiner's position that the direction of at least a portion of the fluorescent radiation to the target tissue would be inherent in Kosa is believed incorrect.

Nonetheless, Applicant amends the independent claims 1, 22, 26 and 33 herein by adding that the emitted radiation of the claims has "sufficient fluence for therapeutic effect." This limitation is inherent in the embodiments described in the specification of the present application, and supported by the description at page 16, lines 16-22 of the application as filed.

Claims 2, 3, 5, 9, and 11-14 depend from claim 1, as amended, and are patentable for the same reasons, and because of the unique combinations recited.

Claims 23-25 and 27 depend from claim 22, as amended, and are patentable for the same reasons, and because of the unique combinations recited.

Accordingly, reconsideration of the rejection of claims 1-3, 5, 9, 11-14, 22-27 and 33 as amended is respectfully requested.

Rejection of Claims 28-32 under 35 U.S.C. §103(a)

Claims 28-32 are rejected under 35 U.S.C. §103(a) as being unpatentable over Kosa in view of Anderson et al. U.S. Patent No. 5,735,844.

Claims 28-32 depend from claim 22, as amended, and are patentable for the same reasons, and because of the unique combinations recited.

Accordingly, reconsideration of the rejection of claims 28-32, in view of the amendments, is respectfully requested.

Allowable Subject Matter

Claims 6-8, 10 and 17-21 are allowed.

Applicant requests reconsideration of the Examiner's objection to claim 4, which depends from claim 1, in light of the amendment to claim 1.

The typographical error in claim 15 having been corrected, it is submitted that claims 15 are 16 are now allowable.

CONCLUSION

It is respectfully submitted that this application is now in condition for allowance, and such action is respectfully requested.

The Commissioner is hereby authorized to charge any fee determined to be due in connection with this communication, or credit any overpayment, to our Deposit Account No. 50-0869 (LSCP 1000-1).

Respectfully submitted,

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